CONN ENERGY, INC.

IBLA 98-136 Decided October 26, 1999

Appeal from a decision of the Acting Associate Director, Minerals Management Service, upholding civil penalty assessment. MMS-97-0058-0PS.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Civil Assessments and Penalties

   To assess a civil penalty under 43 U.S.C. § 1350(b) (1994) and 30 C.F.R. § 250.200(a)(1), the record before the Board must show the existence of a violation and that the violation constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment. The existence of a violation of the safety-system testing regulation at 43 C.F.R. § 250.124 (1995) may reasonably constitute a threat under 30 C.F.R. § 250.200(2)(b) warranting the assessment of a civil penalty.

2. Oil and Gas Leases: Generally--Oil and Gas Leases: Civil Assessments and Penalties

   A failure to test safety equipment installed on oil wells at required intervals prescribed in the regulations may compromise safety resulting in a threat of the danger sought to be avoided. An MMS decision assessing civil penalties under 43 U.S.C. § 1350(b) and 30 C.F.R. § 250.200(a)(1) will be affirmed where there is no dispute that safety testing violations occurred and MMS determined that, due to the nature of the violations, the violations posed a threat of serious, irreparable, or immediate harm or damage to life (including fish or other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

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APPEARANCES: Robert Conn, Operations Manager, Conn Energy, Inc., Metarie, Louisiana, for appellant; Frank A. Conforti, Esq., Office of the Solicitor; U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Conn Energy, Inc. (CEI or appellant), has appealed a September 11, 1997, decision of the Acting Associate Director, Policy and Management Improvement, Minerals Management Service (MMS), denying its appeal from a December 5, 1996, "Reviewing Officer's Final Decision" assessing civil penalties in the amount of $42,000 for failure to test certain safety equipment on two production platforms situated in West Cameron Block 171, OCS Louisiana.

The Reviewing Officer's Final Decision states in part:

> By my letter dated October 24, 1996, you were given notice of the initiation of civil penalty proceedings concerning Civil Penalty Case No. GOM-96-24. The notice was based on an inspection by the Minerals Management Service on December 13, 1995, of Production Platforms A and B, in West Cameron Block, Lease OCS-G 1997, which resulted in the issuance of Incident of Noncompliance (INC) Nos. P-280 and P-283 for alleged violations of 30 C.F.R. § 250.124(a)((1)i) and (iii), respectively.
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> The inspection revealed that the tubing plugs for Wells B-1, B-1D, B-2, B-3, B-4, B-5, B-6, B-8D, and B-10D (9 wells) were last tested on September 15, 1994, and that the tubing plugs for Wells A-1, A-1D, A-4, A-4D, A-5, A-6, A-9, A-9D, AA-10, A-10D, A-12, and A-12D (12 wells) were last tested on April 15, 1995. 30 CFR 250.124(a)(1)(iii) requires that tubing plugs be tested at intervals not exceeding six months. Since a 6-month period is considered a violation period, the failure to have tested the B-Well's tubing plugs during the time period between September 15, 1994, and the issuance of the INC constitutes two violation periods. Similarly, the failure to have tested the A-Wells' tubing plugs during the time periods between April 15, 1995, and the issuance of the INC constitutes two violation periods.
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> The inspection also revealed that the Surface Controlled Subsurface Safety Values (SCSSV'S) for Wells A-2C, A-3C, A-7C, and A-8 (4 wells) were last tested on April 15, 1995. 30 CFR 250.124 (a)(1)(i) requires that SCSSV's be tested at intervals not exceeding six months. The failure to have tested the SCSSV's during the time periods between April 15, 1995, and the issuance of the INC constitutes one violation period.

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In response to the aforementioned notice, your letter dated November 20, 1996, contends the following:

1. In October 1995, Conn Energy, Inc (CEI) terminated a contracted gauging service and assumed operation of the lease. The property stayed shut-in until November 1995, at which time CEI in conjunction with an affiliate began operating the lease.

2. During November the tubing plugs and downhole safety valves for Platform A were tested as part of a restart effort; however, the tests were not documented.

3. CEI did not receive all of its records from the departed gauger and considers it possible that the gauger performed the tests prior to leaving the property.

4. CEI recognizes that the required tests on Platform B were delinquent; however, CEI does not feel that the threat associated with the delinquencies deserve the maximum allowable penalty.

5. CEI, in an effort to demonstrate the value it places on the testing of plugs and valves, concedes to pay a civil penalty of $9000 ($1000 per Platform B well).

In response to CEI's above-listed contentions, the following is offered:

1. It is CEI's responsibility as designated operator of the lease and not that of a contracted agent to comply with applicable federal regulations.

2. Since the last documented tests for the tubing plugs and SCSSV's for the Platform A wells were conducted in April 1995, the required 6-month testing period requires a test no later than October 1995. Therefore, even if the above referenced tests were performed on the tubing plugs and SCSSV's on the Platform A wells in November 1995 as contended, the failure to have performed such tests in October 1995 constitutes one 6-month violation period for all of the previously referenced Platform A wells.

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> 3. With respect to the maximum allowable penalty, your attention is directed to the fact that 43 U.S.C. § 1350(b) allows for a maximum of $20,000 per day per violation.

In conclusion, the Reviewing Officer stated:

> Therefore, based on a complete review of the evidence in this case, including the information contained in CEI's above referenced letter, I find that Conn Energy, Inc. did violate 30 CFR 250.124(a)(1)(i) and (iii) and due to the nature of the threat to human life, the environment, property, and mineral resources associated with the violations, the violations are applicable to the provisions of 43 U.S.C. § 1350(b) and 30 CFR 250.200(a)(1). Consequently, in consideration of all of the circumstances of the violations, a penalty of $42,000 is hereby assessed against Conn Energy Inc. An itemized description of the penalty is as follows:

No. of Well	INC	No. of Violations Periods	Assessment Per Well	Total
9 B-Wells	P-283	2	$1,000	$18,000
12 A-Wells	P-283	1	$1,000	$12,000
4 A-Wells	P-280	1	$3,000	$12,000
				$42,000

Id. at 1-3.

The Reviewing Officer's decision was received by appellant on December 9, 1997. On January 8, 1997, Robert Conn, Operations Manager of CEI filed a timely appeal with the Director, MMS. Therein, Conn requested that the case be remanded to the Reviewing Officer to permit CEI to file a request for hearing. In support of the remand request, Conn explained:

> On October 25, 1996, I received a Reviewing Officer's Notice of Proposed Civil Penalty Assessment dated October 24, 1996. I responded in writing on November 20, 1996 at which time I requested a phone conversation with the Reviewing Officer before the final decision. I received a call from the Reviewing Officer just before the Thanksgiving Holidays very near the deadline for my response and I explained to him that I had not had adequate time to examine the material on my case file, nor had I had adequate time to consult my counsel and develop a proper strategy. He asked me if my response constituted "written evidence" in lieu of a hearing. I told him that I was unclear on the proper procedure and that I needed to consult counsel before making a hearing appeal. My response was an attempt to respond to the Notice of Proposed

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> Civil Penalty in the allotted time. At the time of our phone conversation the Reviewing Officer did not make it clear that he had the authority to grant an extension or that he would be willing to accept another written request for a hearing. Being so close to the deadline and the Holidays I judged that I did not have another opportunity.

CEI advised in its letter and in a subsequent telephone conversation with the Reviewing Officer that it disputed BLM's conclusion that the "violations cited automatically subjected the environment, equipment, and the mineral resource to a threat of serious damage." Conn on behalf of CEI states that his "response was an attempt to obtain a fair resolution to this case based on my beliefs about my right and obligations at the time I responded." CEI closed its notice of appeal by requesting a remand of the decision to the Reviewing Officer to permit CEI an additional 2 weeks to file a written request for a hearing, stating that, with more time, CEI "believe[s] it can gather new evidence to convince the Reviewing Officer that our current beliefs are correct."

In a memorandum to the Chief, Appeals Division, MMS, dated March 11, 1997, captioned "Field Report on Conn Energy, Inc.'s Appeal of Reviewing Officer's Final Decision," the Reviewing Officer addressed the allegations in CEI's letter. The Reviewing Officer denied handling this case any differently from any other case, stating:

> In all cases where an extension of the 30 day time is not requested, the granting of such an extension is offered by the [Reviewing Officer] only when the party, after having received a [notice], proposes a response to the [Reviewing Officer] which requires an extension of the time frame. [1/]

The Reviewing Officer denied that there was no reason to grant an extension of the 30-day time frame in this case since CEI had confirmed that its written response to the notice constituted a response which CEI understood would preclude a hearing and "CEI did not propose any action in the conversation which would require such an extension." (Memorandum at 2.)

On May 29, 1997, Robert Gray of the MMS Appeals Division sent CEI a photocopy of the entire case file, stating that the Appeals Division expected a response to the March 11, 1997, Field Report within 21 days. In its response dated June 19, 1997, CEI challenged MMS' claim that any threat to equipment, personnel, or the environment existed as a result of

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1/ The Reviewing Officer's authority to grant an extension is broader than that asserted here. "The Reviewing Officer may grant the party additional time to submit a request for a hearing" (30 C.F.R. § 250.201(b)(1)) and "shall grant any delays or continuances which the Reviewing Officer determines to be necessary or desirable in the interest of obtaining a fair resolution of the case." 30 C.F.R. § 250.201(b)(2).

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the INC's. CEI produced data showing that the "shut-in tubing pressure (before installation of tubing plugs)" and the "the pressure rating on wellhead equipment for all the A and B platform wells was 5,000 psig."

Contending that no threat existed, CEI denies that any of the wells were flowing or producing as contended by MMS, insisting that, in fact, not one of the wells was capable of flowing on its own. In support of this contention, CEI submitted a table identifying each platform A and B well and describing the specific conditions that precluded the well from flowing on its own. See CEI's letter of June 19, 1997, at 1. Further, CEI contended that "[r]ecent Cathodic Protection surveys and Level III underwater exams indicated that both platforms were sound and capable of withstanding any conditions known in the Gulf of Mexico." Id. at 2. CEI insists that even with untested tubing plugs none of the Platform A or B wells "are capable of sustaining flow and [n]one posed a serious threat to personnel, environment, etc. as defined by CFR § 250.200(b)(2)." Id. CEI denied, moreover, that "any of the alleged violations continued beyond any notification period which is a criterion for the Reviewing Officer to use in assessing penalties as per 30 CFR § 250.200(b)(1)." Id.

Maintaining that the alleged violations did not constitute a serious threat, CEI urged the Director, MMS, to reverse the Reviewing Officer's decision. (CEI's letter at 2-3.) The applicable regulations 30 C.F.R. § 250.124(a)(1)(i) (1996) provides:

> Each surface controlled subsurface safety device installed in a well, including such devices in shut in and injection wells, shall be tested in place for proper operation when installed or reinstalled and thereafter at intervals not exceeding 6 months. If the device does not operate properly, or if a liquid leakage rate in excess of 200 cubic centimeters per minute or a gas leakage rate in excess of 5 cubic feet per minute is observed, the device shall be removed, repaired and reinstalled, or replaced. Testing shall be in accordance with API RP 14B to ensure proper operation.

The regulation at 30 C.F.R. § 250.124(a)(iii) (1996), states:

> [E]ach tubing plug installed in a well shall be inspected for leakage by opening the well to possible flow at intervals not exceeding 6 months. If a liquid leakage rate in excess of 200 cubic centimeters per minute or a gas leakage rate in excess of 5 cubic feet per minute is observed, the device shall be removed, repaired and reinstalled, or replaced. An additional tubing plug may be installed in lieu of removal.

In his September 11, 1997, decision, the Acting Associate Director (Director), MMS, denied CEI's appeal. The Director reviewed the regulations, CEI's failure to test the wells at the maximum 6-month intervals required by the regulations and the Reviewing Officer's decision. The Director related that

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> the reviewing Officer assessed civil penalties for failure to test tubing plugs at the rate of $1,000.00 per well per violation period for a total of $30,000.000 for violations of 30 CFR 250.124(a)(1)(iii) [1996] * * * [and] assessed civil penalties for failure to test SCSSV's at the rate of 3,000.00 per well per violation period for a total of $12,000.00 for violations of 30 CFR 250.124(a)(1)(i) [1996].

(Decision at 2.)

In responding to CEI's claim, (1) "that there was no threat of serious, irreparable, and immediate harm in any of the violations cited; (2) that any penalties assessed should be limited to the period of time the violations continued beyond any reasonable period allowed for corrective action pursuant to 30 CFR 250.201(b)(1) and (3) [citations omitted];" and "that none of the wells in the case are capable of sustaining flow of hydrocarbons," (Decision at 2) the Director stated:

> These regulations require the lessee to install and maintain a variety of safety devices and assign to MMS responsibility for conducting annual inspections to ensure that environment protection equipment and safety equipment designed to prevent or ameliorate blowouts, fires, spillage, or other major accidents, are installed and operating properly.

(Decision at 3.)

The Director stated further that "[i]n order for a civil penalty to be appropriate under 43 U.S.C. 1350(b) and 30 CFR 250.200(a)(1) (1996), a violation must occur and the violation must increase the risk of harm to the environment, human life, or property based upon the facts known to exist at the time of the violation." Those conditions, the Director concluded, "existed for the violations involved in this appeal, and are detailed in the Reviewing Officer's decision and CEI's Nov. 20, 1996, response to the Notice of Proposed Civil Penalty Assessment (Notice), dated October 24, 1996." Id. Continuing, the Director stated:

> There is no dispute that the safety devices (tubing plugs and SCSSV'S) were not tested in a timely fashion as required in 30 CFR 250.124(a)(1)(i) and (iii). Indeed, CEI has acknowledged its delinquent testing procedures. (See Response to Notice).
>
> This civil penalty case deals with the regulatory requirement to install, maintain, and test tubing plugs or subsurface safety devices in wells open to hydrocarbon-bearing zones capable of natural flow. However, CEI asserts that since it has determined that these wells were incapable of natural flow, there can be no serious threat to the human and/or marine environment. I am not persuaded. Title 30 CFR 250.121(a)

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(1996) states that a well must have a safety device "* * * unless, after application and justification, the well is determined by the District Supervisor to be incapable of natural flowing." Had CEI believed, at the time these violations occurred, that the wells were incapable of natural flow, CEI could have followed the regulation and received a waiver which would have allowed for the removal of the safety device, obviating the need for periodic testing.

The proper determination of whether a threat exists is made at the time of the violation. Reservoir characteristics are dynamic by nature, not static. Constant migration is occurring in reservoirs, and it is not always known what type of fluids and pressures may be found at the bottom of a well. Therefore, the reviewing officer concluded, and I concur, that a threat did exist at the time of the violations since it was unknown whether the wells were capable of flow.

Id. at 3-4.

With respect to the appropriateness of the penalty assessed, the Director stated:

The regulation, 30 CFR 250.206(a)(1)(1996), directs the reviewing officer on how to assess penalties based on the type of violation committed. Initially, the regulation restates the law at 43 U.S.C. § 1350(b) by declaring the maximum penalty amount of $20,000.00 per day per violation. The regulations then directs how to assess the penalty, depending on what type of violation has occurred. There are two types of violations: (1) those violations described in 30 CFR 250.200(b)(1) and (2) those violations described in 30 CFR 250.200(b)(2).

The first type of violation involves the expiration of a time period. The company is notified of the violation and given a reasonable amount of time to correct the violation. If the company does not correct the violation in that given amount of time, penalties may be assessed "for each day the violation continues after notice and a reasonable period for corrective action."

The second type of violation is where it has been determined that the violation constitutes or constituted a threat of serious, irreparable, or immediate damage to life or the environment. There is no time period given to the company to correct the violation prior to the assessment of a penalty. For this type of violation, penalties may be assessed "for each day the violation continued after it first occurred."

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> These are two separate types of violation, and penalties should be assessed as such. In this case, the reviewing officer considered each 6 month a violation period as opposed to each day being considered a violation. I conclude that the penalty amounts assessed by the reviewing officer are appropriate for these violations and circumstances and were not excessive.

(Director's Decision at 4-5.)

In its appeal to the Board, CEI challenges the Director's conclusion that its "failure to test tubing plugs on shut-in well's tubing plugs caused a threat of serious damage as described in § 250.200(b)(2)." (CEI's Additional Reply of December 1, 1997, (Reply) at 1.) The Director, CEI contends, erred in ignoring CEI's tables showing pressure and well conditions. (October 14, 1997, Notice of Appeal Statement of Reasons (SOR) at 1.) CEI complains that the Director, in a footnote of his Decision "admitted that CEI did provide tables listing flow conditions of the well," but was critical of CEI's failure to provide supporting documentation. CEI faults the Director for not requesting additional documentation and for seemingly making his decision without considering the information in the tables while stopping "well short of challenging their validity." (SOR at 1.)

CEI notes that under 30 C.F.R. § 250.200(b)(2) (1995), the Reviewing Officer must determine whether the violation constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life and whether, under 43 C.F.R. § 250.203(a)(3) there is sufficient evidence on record indicating a serious threat of harm at the time of, or prior to, the violation. (Supplemental Statement of Reasons (SSOR) at 1.) CEI claims its records show that on December 13, 1995, "the tubing plugs were in place and functional as evidenced by the test conducted on April 15, 1995, [2/]" which in turn show that "the wells were not threatening" and there were "no prior records indicating any threats." (SSOR at 1.) CEI reasons that because the plugs were in place and functional before and after the issuance of the notice of noncompliance, no threat existed. (SSOR at 1.)

In its answer, MMS asserts that the Director properly rejected CEI's argument that "the failure to perform the required safety checks does not represent a threat to the environment unless the equipment is subsequently, * * * discovered to have been nonfunctional." Id. at 2. MMS contends that CEI could have sought a waiver of the testing requirement if the wells were incapable of flowing. MMS asserts "Conn chose not to pursue that course, but now attempts to deflect the consequences of its choice." MMS maintains that "absent a determination by its District Supervisor under this

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2/ CEI refers to Aug. 15, 1995, however, the record shows that the last test of tubing plugs was Apr. 15, 1995. (Notice of Reviewing Officer's Final Decision at 1.)

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regulation, MMS properly considers each well as having the potential to produce, and thereby as representing a threat if not properly controlled." (Answer at 2-3.)

[1,2] There is no evidence in the record to dispute MMS' determination that CEI failed to test the surface safety devices installed on the platform A and B wells and tubing plugs on platform A wells at 6 months intervals as required by 43 C.F.R. § 250.124 (a)(1)(i) and (iii). Pursuant to 43 U.S.C. § 1350(b)(1) and (2), MMS has authority to assess civil penalties for such violations:

> (b) Civil penalties; hearing
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> (1) Except as provided in paragraph (2), if any person fails to comply with any provision of this subchapter, or any term of a lease, license, or permit issued pursuant to this subchapter, or any regulation or order issued under this subchapter, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than $20,000 for each day of the continuance of such failure. The Secretary may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation had been given an opportunity for a hearing. The Secretary shall, by regulation at least every 3 years, adjust the penalty specified in this paragraph to reflect any increases in the Consumer Price Index (all items, United States city average) as prepared by the Department of Labor.
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> (2) If a failure described in paragraph (1) constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, a civil penalty may be assessed without regard to the requirement of expiration of a period allowed for corrective action.

The narrative description of the violation provided at #6 of the Compliance Review Form (Form MMS-129 (June 1994)) states in part:

> Onsite inspection of Conn's Energy's West Cameron Block 171, A & B platforms, Lease OCS-G 1997, on December 13, 1995, resulted in issuance of 21 incidents of noncompliance (INC) * * * which is very serious in nature and required shut-in enforcement action. The incident of non-compliance documents Conn's failure to comply with subsurface safety systems requirements spelled out in the OCS Regulations, in that the Surface Controlled Subsurface Safety Valve(SCSSV) for Wells A-2C, A-3C, A-7C, and A-8 had not been tested at the required interval (six months).

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(Compliance Review Form at 2.) The narrative described the 21 incidents where wells equipped with tubing plugs had not been tested at the required interval, and documented that the MMS Inspector had verified from operator's records at the platform site that none of the subsurface valves had been checked at proper intervals and that four wells on platform A were open to production and were producing with no operator personnel in attendance and were not flagged as required by the regulations.

At #15 of the Compliance Review Form Narrative, the inspector explains the severity of the violations:

> Maintaining an operable downhole valve (SCSSV, SSCSV, or tubing plug) is very critical to maintaining a safe and pollution-free operation. In the event of an emergency the downhole valve is the final device to avert a catastrophic event.
>
> Inspection frequency assures the operator to the integrity of the SCSSV and SSCSV [sic]. Testing frequency of the tubing plugs assures the operator that the plug is holding. In the event that a tubing plug is not checked and is leaking, pressure is allowed to build up. In the event of a catastrophic failure of the wellhead the threat and potential of a disaster is present.
>
> Conn made no attempt to contact the Lake Charles Subdistrict Supervisor that the downhole valves had not been checked, or [sic] made no attempt to obtain an extension to test the valves.

CEI argued on appeal to the Director and before the Board that testing may have been performed by a previous operator, however it did not provide any records to document this hypothesis, and what evidence it did offer merely confirmed the fact that the violations occurred. CEI's arguments that the violations did not constitute a serious threat are unpersuasive. The General requirements provision of Subpart H - Oil and Gas Production Safety Systems, 43 C.F.R. § 250.120, requires that "[p]roduction safety equipment shall be designed, installed, used, maintained, and tested in a manner to assure the safety and protection of the human, marine and costal environments." Pursuant to 43 C.F.R. § 250.121(a), "all tubing installations open to hydrocarbon-bearing zones shall be equipped with subsurface safety devices that will shut off the flow from the well in the event of an emergency unless, after application and justification, the well is determined by the District Supervisor to be incapable of natural flowing."

It is apparent that appellant failed to test the safety devices on its wells at regular intervals as specified by the regulation, or in the alternative failed to apply for a determination that the wells were incapable of flowing naturally. Conn concedes that the failure to test the safety devices constitutes a violation of 30 C.F.R. §§ 250.120 and 250.124,

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but denies that the violation constituted a threat. Specifically, Conn argues that the "issue in this case has been whether or not the failure to test the plugs constituted a serious threat. As evidenced by our plug inspection conducted both before and after the issuance of non-compliance on December 13, 1995, the plugs were in place and functional, therefore no threat existed." (SSOR at 2.) According to appellant, the absence of a threat is demonstrated by the fact that nothing untoward actually occurred. We disagree for several reasons.

As an initial matter, the proper point to determine whether a violation exists and whether it poses a threat to human life, the environment and mineral resources is, as noted in the Director's Decision, at "the time of the event." (Decision at 4.) Second, the Regional Director is authorized to direct the creation of a case file and appoint a Reviewing Officer whenever, on the basis of evidence available at the time of the event, he or she determines that a violation of, or failure to comply with, any provision of the Outer Continental Shelf Lands Act, a lease or a regulation probably occurred. In such instances, the Regional Director need only conclude "that the violation may constitute or may have constituted a threat of serious, irreparable, or immediate harm or damage * * *." 30 C.F.R. § 250.200(a)(1) (emphasis added). As "threat" of danger or injury is by definition one which is unrealized, it is sufficient that the potential for a threat may exist. Accordingly, the very thrust of the safety provisions is to take steps to prevent the occurrence of dangerous conditions or circumstances, and to that end, the regulations impose an affirmative duty to regularly ascertain and ensure that subsurface valves actually are in proper working order and can respond should an emergency arise. Thus, contrary to appellant's argument, no regulatory provision conditions the existence of a violation on the materialization of the danger posed by a failure to comply with the inspection regulation, and we decline to fashion such a rule here. We therefore find that CEI's failure to fulfill that obligation for an extended period establishes the "potential for disaster" noted by the inspector. (Compliance Review Form at #15.) Having correctly determined that a violation under 30 C.F.R. § 250.200(b)(1) occurred, we now consider the penalties assessed.

The regulation, 30 C.F.R. § 250.206(a)(1), provides as follows:

> If the Reviewing Officer determines that a civil penalty is to be assessed, the penalty shall not exceed $20,000 for each day of the continuation of the violation. For violations described in §250.200(b)(1) * * *, the penalty may be assessed for each day the violation continues after notice and a reasonable period for corrective action. For violations described in §250.200(b)(2) * * *, the penalty may be assessed for each day the violation continued after its first occurred.

The violations pertain to 21 wells and 2 inspection periods. The record shows that the safety devices on 9 of those wells had not been tested in 15 months and the devices on 12 of the wells had not been tested

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in 8 months. Rather than assessing a civil penalty for each day the violations continued uncorrected, as the Reviewing Officer certainly could have under the regulation, he assessed penalties for each 6-month period. Given the magnitude of the potential danger posed by uninspected subsurface safety valves on 21 offshore wells for the periods of time involved, we find no reason to disturb the decision to assess civil penalties or the amount imposed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

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Gail M. Frazier
Administrative Judge

I concur:

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T. Britt Price
Administrative Judge